

ADMINISTRATIVE PANEL DECISION

Blackbaud, Inc. v. Domain / Administrator

Case No. D2022-1549

1. The Parties

The Complainant is Blackbaud, Inc., United States of America (“United States”), represented by Soteria LLC, United States.

The Respondent is Domain / Administrator, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <blackbaudschool.com> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2022. On April 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 29, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 2, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on May 3, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 5, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 25, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 4, 2022.

The Center appointed Luca Barbero as the sole panelist in this matter on June 9, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a cloud computing provider that serves the social good community, nonprofits, foundations, corporations, education institutions, healthcare organizations, religious organizations and individual change agents. Its products focus on fundraising, website management, CRM, analytics, financial management, ticketing and education administration.

The Complainant is the owner, amongst others, of the following trademark registrations for BLACKBAUD:

- United States trademark registration No. 5280412 for BLACKBAUD (word mark), filed on February 2, 2017 and registered on September 5, 2017 in international class 9;

- United States trademark registration No. 5280411 for BLACKBAUD (word mark), filed on February 2, 2017 and registered on September 5, 2017 in international class 42.

The Complainant is also the owner of the domain name <blackbaud.com>, which was registered on October 24, 1994 and is used by the Complainant to promote its products and services under the trademark BLACKBAUD.

The disputed domain name <blackbaudschool.com> was registered on March 22, 2022 and is pointed to a parking page with commercial links related to school management and fundraising software.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name <blackbaudschool.com> is confusingly similar to the trademark BLACKBAUD in which the Complainant has rights as it reproduces the trademark in its entirety with the mere addition of the descriptive term "school" and the generic Top-Level Domain ("gTLD") ".com".

With reference to rights or legitimate interests in respect of the disputed domain name, the Complainant states that the Respondent is in no way affiliated with the Complainant and was not authorized by the Complainant to register or use the trademark BLACKBAUD.

The Complainant further submits that, considering the disputed domain name and the parking page links displayed on the website to which the disputed domain name resolves are confusingly similar in nature to the Complainant's business.

In view of the above, the Complainant concludes that the Respondent has not made preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services and is not making a legitimate, noncommercial or fair use of the disputed domain name.

With reference to the circumstances evidencing bad faith, the Complainant indicates that, considering the Complainant's trademark is globally recognized in its field, the Complainant is often targeted by domain owners who are in the business of selling domain names for a profit.

The Complainant submits that, in view of the confusing similarity of the disputed domain name with its trademark and considering the Respondent was also involved in a prior case initiated by the Complainant, the Respondent is engaged in the business of cybersquatting.

Lastly, the Complainant points out that, since mail exchange records are displayed in the DNS configuration of the disputed domain name, it is possible that the disputed domain name may also be used to send fraudulent emails.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

According to paragraph 15(a) of the Rules: “A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Panel finds that the Complainant has established rights over the trademark BLACKBAUD based on the trademark registrations cited under section 4 above.

As highlighted in section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), the first element functions primarily as a standing requirement, and the threshold test for confusing similarity typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

Moreover, as found in a number of prior cases decided under the Policy, where a trademark is recognizable within a domain name, the addition of descriptive terms does not prevent a finding of confusing similarity under the first element. See section 1.8 of the [WIPO Overview 3.0](#).

The Panel finds that the disputed domain name is confusingly similar to the trademark BLACKBAUD as it reproduces the trademark in its entirety with the addition of the gTLD “.com”, which can be disregarded when comparing the similarities between a domain name and a trademark, and the word “school”, which does not prevent a finding of confusing similarity.

Therefore, the Panel finds that the Complainant has proven that the disputed domain name is confusingly similar to a trademark in which the Complainant has established rights according to paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

It is well established that the burden of proof lies on the complainant. However, satisfying the burden of proving a lack of the respondent’s rights or legitimate interests in respect of the domain name according to paragraph 4(a)(ii) of the Policy is potentially onerous, since proving a negative can be difficult considering such information is often primarily within the knowledge or control of the respondent.

Accordingly, in line with previous UDRP decisions, it is sufficient that the complainant show a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name in order to shift the burden of production on the respondent. If the respondent fails to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy or on any other basis, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Panel finds that the Complainant has made a *prima facie* case and that the Respondent, by not having submitted a Response, has failed to demonstrate rights or legitimate interests in the disputed domain name in accordance with paragraph 4(c) of the Policy.

Moreover, it has been repeatedly stated that when a respondent does not avail himself of its right to respond to a complaint, it can be assumed in appropriate circumstances that the respondent has no rights or legitimate interests in the disputed domain name (*Nordstrom, Inc. and NIHC, Inc. v. Inkyu Kim*, WIPO Case No. [D2003-0269](#)).

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademark.

Moreover, there is no indication before the Panel that the Respondent is commonly known by the disputed domain name.

As indicated above, the disputed domain name, confusingly similar to the Complainant's trademark, has been pointed to a website displaying pay-per-click links related to the Complainant's market niche. Therefore, Internet users visiting the Respondent's website might be misled into believing that the website is operated by the Complainant or one of its affiliated or authorized entities, whilst being diverted to other websites via the sponsored links published therein. The Panel finds that such use of the disputed domain name does not amount to a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

Indeed, as stated in section 2.9 of the [WIPO Overview 3.0](#), "Applying UDRP paragraph 4(c), panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the complainant's mark or otherwise mislead Internet users".

In addition, as indicated in section 2.5.1 of the [WIPO Overview 3.0](#), "Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner".

Therefore, the Panel finds that the Complainant has proven that the Respondent has no rights or legitimate interests in the disputed domain name according to paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires that the Complainant prove that the disputed domain name was registered and is being used by the Respondent in bad faith.

The Panel finds that, in light of the prior registration and use of the Complainant's trademark BLACKBAUD in connection with the Complainant's products and services and considering the widely known character of the trademark in its field, the Respondent was or ought to be aware of the Complainant's trademark when it registered the disputed domain name, with which it is confusingly similar.

Moreover, considering the composition of the disputed domain name, combining the Complainant's trademark with the term "school", which is one of the sectors to which the Complainant's products and services apply, and in view of the publication, on the correspondent website, of sponsored links related to the same market niche as that of the Complainant, namely related to school management and fundraising software, the Panel finds that the Respondent was indeed aware of the Complainant and its trademark at the time of registering the disputed domain name.

The Panel also notes that, in view of the above-described use of the disputed domain name, the Respondent has intentionally attempted to attract Internet users to its website, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website, according to paragraph 4(b)(iv) of the Policy.

Therefore, the Panel finds that the Complainant has also proven that the Respondent registered and is using the disputed domain name in bad faith according to paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <blackbaudschool.com> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Sole Panelist

Date: June 23, 2022